

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #3)
CELLULAR GENERAL PARTNERSHIP FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE DOMESTIC PUBLIC CELLULAR) CASE NO. 90-307
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN RURAL SERVICE AREA #3)
(MEADE) OF THE COMMONWEALTH OF)
KENTUCKY)

O R D E R

This matter arising upon petition of Kentucky RSA #3 Cellular General Partnership ("Kentucky RSA") filed October 31, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of Exhibits 1, 2, 3, and 4 to the petition on the grounds that public disclosure of the information is likely to cause Kentucky RSA competitive injury, and it appearing to this Commission as follows:

Exhibits 1, 2, 3, and 4 were filed in conjunction with Kentucky RSA's application for a Certificate of Public Convenience and Necessity to provide domestic public cellular telecommunications service in rural service area #3 of this state. Exhibit 1 consists of topographical maps showing the location of the projected cell sites of Kentucky RSA during its first year of operation. Exhibit 2 consists of a description of the name, latitude, longitude, and status of acquisition of each of the proposed cell sites of Kentucky RSA during its first four years of operation. Exhibit 3 consists of a description of the acquisition

and other capital costs of the projected cell sites of Kentucky RSA during its first year of operation. Exhibit 4 consists of a description of the acquisition and other capital costs of the Kentucky switch for the cellular telecommunications system of which Kentucky RSA is a part.

The information sought to be protected is not generally known outside of Kentucky RSA's business and is not generally known by Kentucky RSA's employees except on a need-to-know basis. Kentucky RSA seeks to protect and preserve the confidentiality of the information by all appropriate means.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The cellular telephone market is a competitive industry. This is reflected by the fact that, as proposed, each service area will be served by two competing companies. Thus, any information developed by Kentucky RSA that gives it an advantage over its competitors should be protected from public disclosure.

Although the information contained in Exhibit 1 identifies what Kentucky RSA believes to be the optimal locations for the cell sites necessary to service the area for which the certificate

is sought, that information must be published by the company in order to give the property owners and other persons who might be affected by construction of the cell sites notice of construction and an opportunity to protest. Thus, the information is not entitled to protection as confidential. Similarly, those portions of Exhibit 2 that identify the tower sites to be constructed within one year cannot be confidential since they are part of the pending certificate. The remaining portions, however, relating to construction in three to four years, are entitled to protection as confidential.

Exhibits 3 and 4 contain financial information which competitors could use to determine the rates Kentucky RSA must charge for its services in order to break even. Knowledge of this information would enable competitors to undercut Kentucky RSA's rates in the marketplace. Therefore, disclosure of this information is also likely to cause Kentucky RSA competitive injury, and the information should be protected from disclosure as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the topographical maps showing the location of the projected cell sites of Kentucky RSA during its first year of operation contained in Exhibit 1 to the petition and the description of the name, latitude, longitude, and status of acquisition of the proposed cell sites of Kentucky RSA during its first year of operation contained in Exhibit 2 to the petition be and is hereby denied.


2. The description of the name, latitude, longitude, and status of acquisition of each of the proposed cell sites of GTE Mobilnet during its second, third, and fourth years of operation contained in Exhibit 2 to the petition, the description of the acquisition and other capital costs of the projected cell sites of Kentucky RSA during its first year of operation contained in Exhibit 3 to the petition, and the description of the acquisition and other capital costs of the Kentucky switch for the cellular telecommunications system of which Kentucky RSA is a part contained in Exhibit 4 to the petition, all of which Kentucky RSA has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.


3. Kentucky RSA shall, within 10 days of the date of this Order, file an edited copy of Exhibit 2, 3, and 4 with the confidential material obscured for inclusion in the public record, with copies to all parties of record.


4. Exhibit 1 to the petition shall be held as confidential and proprietary for a period of five working days from the date of this Order, at the expiration of which time it shall be placed in the public record.

Done at Frankfort, Kentucky, this 28th day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director